

**Testimony to House Natural Resources Committee
On Bill HB044
Jan. 28, 2009**

I represent myself, Montanans for Property Rights and Sanders Natural Resource Council, of which I am Chairman.

HB44 is a good bill overall in that it strengthens local government interaction with Federal and State agencies by supporting the principles of coordination.

However, there are a few wording changes that we feel are very important which would make the Act stronger and compatible with the existing laws regarding coordination.

You have in front of you our proposed changes, which are displayed in red.

For the past 5 years we have been studying the application and effectiveness of coordination and cooperating agency status as the means of local government participation in Federal and State planning processes. We have done a thorough comparison of "coordination" and "cooperating agency status"

From researching many case histories and personal involvement in the theory and practice of coordination, our conclusion is that cooperating agency status when used without the local government first establishing coordination simply is not effective for local government policies, goals and objectives being considered in Federal and State planning.

My own personal interviews with heads of government who have used cooperating agency status has revealed limited success at best. On the other hand, those counties and other government units which have invoked coordination, with or without cooperating agency status, have had continued long-term success at influencing land management agencies.

Cooperating agency status has a limited scope, that of participation at the planning table only after planning has already begun; such as in an Environmental Impact Statement or Environmental Assessment for example.

Cooperating agency status can be withheld by the higher level agency, whereas coordination cannot be withheld. The lower level agency asserts or invokes its right of coordination and the higher governmental agency must engage in the coordination process. For Federal coordination, this has been confirmed and supported over the years by the US Department of Justice.

This is by no means saying that the local or State government has "supremacy" over Federal government. In fact proper application of coordination confirms the Supremacy clause of the US Constitution: that is, that Federal laws are the supreme law of the land. Coordination is invoked and implemented under that principle

As written, the bill would create new terminology: "coordinating agency status" which does not currently exist in law, when in reality, the intention is to support "coordination". The word used Federal and State law, which is clearly understood, is "coordinate" or "coordination".

The objection we have to use of "coordinating agency status" is that it implies something granted, as opposed to being invoked. Use of that phrase is sure to cause confusion in the future when courts will have to decide what it means. I don't think the author of this bill intended to create confusion.

By amending HB44 as we have proposed you will create an Act that will conform with the definitions of coordination established over many years at both Federal and State levels and will give needed support to the use of coordination and cooperating agency status.

Thank you for your time and attention.

Respectfully,
Ron Olfert
5 Benedick Ln
Plains, MT 59859
406-826-0035

Amendments proposed by Ron Olfert, Montanans for Property Rights, Sanders Natural
Resource Council

HOUSE BILL NO. 44

INTRODUCED BY C. VINCENT

BY REQUEST OF THE FIRE SUPPRESSION COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE REQUIREMENTS FOR THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION'S PARTICIPATION IN FEDERAL FOREST MANAGEMENT PLANNING; AMENDING SECTION 76-13-702, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 76-13-702, MCA, is amended to read:

"76-13-702. Duties -- authority. To implement the policy of 76-13-701, the department of natural resources and conservation:

(1) shall support sustainable forest management practices, including forest restoration, on public forests in Montana consistent with all applicable laws and administrative requirements;

(2) shall provide technical information and educational assistance to nonindustrial, private forest landowners;

(3) shall promote forest management activities within and adjacent to the wildland-urban interface and promote the implementation of community wildfire protection plans;

(4) shall promote a viable forest and wood products industry and other businesses and individual activities that rely on public forest lands;

(5) shall represent the state's interest in the federal forest management planning and policy process, including establishing ~~cooperative agency status and coordinating agency status~~coordination with federal agencies;

~~(6) shall assist local government entities in establishing cooperative agency status and coordinating agency status~~coordination with federal agencies;

~~(6)~~(7) shall promote the development of an independent, long-term sustained yield calculation on Montana's federal forests;

~~(7)~~(8) has the authority to intervene in litigation or appeals on federal forest management projects that comply with the policy in 76-13-701 and in which local and state interests are clearly involved;

~~(8)~~(9) has the authority to enter into agreements with federal agencies to participate in forest management activities on federal lands; ~~and~~

~~(9)~~(10) shall participate in and facilitate collaboration between traditional forest interests in reaching consensus-based solutions on federal land management issues."

~~(11) may apply for cooperating agency status with federal agencies;~~

~~(12) at the request of a local government entity may assist that entity in establishing cooperating agency status with federal agencies; and~~

(13) Nothing in this act shall be construed as a restriction or limitation on the authority of any local government entity to invoke its authority to coordinate with federal and state agencies.

NEW SECTION. Section 2. Effective date. [This act] is effective July 1, 2009.

- END -

HOUSE BILL NO. 44

INTRODUCED BY C. VINCENT

BY REQUEST OF THE FIRE SUPPRESSION COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE REQUIREMENTS FOR THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION'S PARTICIPATION IN FEDERAL FOREST MANAGEMENT PLANNING; AMENDING SECTION 76-13-702, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 76-13-702, MCA, is amended to read:

"76-13-702. Duties -- authority. To implement the policy of 76-13-701, the department of natural resources and conservation:

(1) shall support sustainable forest management practices, including forest restoration, on public forests in Montana consistent with all applicable laws and administrative requirements;

(2) shall provide technical information and educational assistance to nonindustrial, private forest landowners;

(3) shall promote forest management activities within and adjacent to the wildland-urban interface and promote the implementation of community wildfire protection plans;

(4) shall promote a viable forest and wood products industry and other businesses and individual activities that rely on public forest lands;

(5) shall represent the state's interest in the federal forest management planning and policy process, including establishing ~~cooperative agency status and coordinating agency state coordination~~ with federal agencies;

(6) shall assist local government entities in establishing ~~cooperative agency status and coordinating agency state coordination~~ with federal agencies;

~~(6)~~(7) shall promote the development of an independent, long-term sustained yield calculation on Montana's federal forests;

~~(7)~~(8) has the authority to intervene in litigation or appeals on federal forest management projects that comply with the policy in 76-13-701 and in which local and state interests are clearly involved;

~~(8)~~(9) has the authority to enter into agreements with federal agencies to participate in forest management activities on federal lands; ~~and~~

~~(9)~~(10) shall participate in and facilitate collaboration between traditional forest interests in reaching consensus-based solutions on federal land management issues."

~~(11) may apply for cooperating agency status with federal agencies;~~

~~(12) at the request of a local government entity may assist that entity in establishing cooperating agency status with federal agencies; and~~

(13) Nothing in this act shall be construed as a restriction or limitation on the authority of any local government entity to invoke its authority to coordinate with federal and state agencies.

NEW SECTION. Section 2. Effective date. [This act] is effective July 1, 2009.

- END -